

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAVAR LESTER BLUEFORD,

Plaintiff,

v.

SALINAS VALLEY STATE PRISON, et
al.,

Defendants.

Case No. [19-cv-02951-PJH](#)

**ORDER OF DISMISSAL WITH LEAVE
TO AMEND**

Plaintiff, a state prisoner, proceeds with a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

DISCUSSION

STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although in order to state a claim a complaint "does not need detailed

1 factual allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment]
2 to relief' requires more than labels and conclusions, and a formulaic recitation of the
3 elements of a cause of action will not do. . . . Factual allegations must be enough to
4 raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550
5 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer "enough facts to state
6 a claim to relief that is plausible on its face." *Id.* at 570. The United States Supreme
7 Court has recently explained the "plausible on its face" standard of *Twombly*: "While legal
8 conclusions can provide the framework of a complaint, they must be supported by factual
9 allegations. When there are well-pleaded factual allegations, a court should assume their
10 veracity and then determine whether they plausibly give rise to an entitlement to relief."
11 *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

12 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
13 elements: (1) that a right secured by the Constitution or laws of the United States was
14 violated, and (2) that the alleged deprivation was committed by a person acting under the
15 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

16 **LEGAL CLAIMS**

17 Plaintiff states that he received inadequate medical care.

18 Deliberate indifference to serious medical needs violates the Eighth Amendment's
19 proscription against cruel and unusual punishment. *Estelle v. Gamble*, 429 U.S. 97, 104
20 (1976); *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other*
21 *grounds*, *WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en
22 banc). A determination of "deliberate indifference" involves an examination of two
23 elements: the seriousness of the prisoner's medical need and the nature of the
24 defendant's response to that need. *Id.* at 1059.

25 A "serious" medical need exists if the failure to treat a prisoner's condition could
26 result in further significant injury or the "unnecessary and wanton infliction of pain." *Id.*
27 The existence of an injury that a reasonable doctor or patient would find important and
28 worthy of comment or treatment; the presence of a medical condition that significantly

1 affects an individual's daily activities; or the existence of chronic and substantial pain are
2 examples of indications that a prisoner has a "serious" need for medical treatment. *Id.* at
3 1059-60.

4 A prison official is deliberately indifferent if he or she knows that a prisoner faces a
5 substantial risk of serious harm and disregards that risk by failing to take reasonable
6 steps to abate it. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). The prison official must
7 not only "be aware of facts from which the inference could be drawn that a substantial
8 risk of serious harm exists," but he "must also draw the inference." *Id.* If a prison official
9 should have been aware of the risk, but was not, then the official has not violated the
10 Eighth Amendment, no matter how severe the risk. *Gibson v. County of Washoe*, 290
11 F.3d 1175, 1188 (9th Cir. 2002). "A difference of opinion between a prisoner-patient and
12 prison medical authorities regarding treatment does not give rise to a § 1983 claim."
13 *Franklin v. Oregon*, 662 F.2d 1337, 1344 (9th Cir. 1981).

14 Plaintiff states that he experienced a painful sore in his right nostril which was
15 leaking an unknown substance and swelled. Defendant, a nurse, examined plaintiff,
16 even though a certain machine did not work and said he did not see anything, and it was
17 probably a pimple. Due to more pain and leakage from his nose plaintiff went two more
18 times to see defendant but did not receive proper treatment for the pain and swelling. He
19 states he should have been provided pain medication and antibiotics. Plaintiff was
20 referred to a doctor but was transferred before that occurred.

21 The complaint is dismissed with leave to amend for plaintiff to provide more
22 information. Plaintiff must more thoroughly describe his medical condition and
23 demonstrate that it was a serious medical condition. He must also describe how
24 defendant was deliberately indifferent in the treatment he received and why pain
25 medication and antibiotics should have been provided. In addition to providing more
26 information in an amended complaint, plaintiff may choose to attach any medical
27 paperwork to the amended complaint regarding his medical care and the underlying
28 medical problem at issue in this action.

CONCLUSION

1. The complaint is **DISMISSED** with leave to amend in accordance with the standards set forth above. The amended complaint must be filed no later than **September 3, 2019**, and must include the caption and civil case number used in this order and the words AMENDED COMPLAINT on the first page. Because an amended complaint completely replaces the original complaint, plaintiff must include in it all the claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate material from the original complaint by reference. Failure to file amended complaint may result in dismissal of this action.

2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the court informed of any change of address by filing a separate paper with the clerk headed "Notice of Change of Address," and must comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

Dated: July 31, 2019



PHYLLIS J. HAMILTON
United States District Judge